Two Supreme Court Decisions Shift the Ground for Legal Challenges to Federal Agency Actions

Description

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The Supreme Court has now concluded its most recent term, and in its final two days handed down two decisions with major implications in the area of administrative law (each by a 6-3 margin). And while their precise consequences remain to be seen, both decisions—previewed by PSH earlier this year—have the effect of widening the path for challenges in court to the actions of federal administrative agencies. Regulated entities should take note of these decisions and consider whether their rights may be implicated.

***Loper Bright* overrules *Chevron* decision, retires deference to agency legal interpretations.**

On the penultimate day of its term, the Court handed down its highly anticipated decision in *Loper Bright Enterprises v. Raimondo*, in which the Court reconsidered its doctrine of "*Chevron* deference." Read the decision here. The *Chevron* doctrine, articulated in the Court's 1984 decision of *Chevron U.S.A. Inc v. Natural Resources Defense Council, Inc.*, provided a framework for judicial review of legal interpretations by administrative agencies, typically in the context of a legal challenge disputing whether federal law authorizes the agency to promulgate a certain rule. Under the *Chevron* framework, courts deferred to agency interpretations (with some exceptions) if two conditions were met: first, that the statute under interpretation was ambiguous, and second, that the agency's interpretation was reasonable. This two-step process rested on the presumption "that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows."

With *Loper Bright*, the Court overruled its 1984 decision and retired this deference doctrine. Such deference, the Court reasoned, was inconsistent with the judiciary's "proper and peculiar" responsibility for the "final 'interpretation of the laws," established by the Framers of the Constitution to be "independent of influence from the political branches."

Chevron deference, further, conflicted with the Administrative Procedure Act (APA), which in 1946 established the "basic contours of judicial review" of agency actions, and directed reviewing courts to "decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." Deference to agency interpretation, the Court held, departed from the text, history, and widespread contemporary understanding of the APA. It required courts to accept "permissible" interpretations of statutes, even if that interpretation was "not the one the court, after applying all relevant interpretative tools, concludes is best." There was the rub for the majority. Resolution of statutory ambiguities involved legal interpretation. Such matters were the province of the judiciary under the APA. And in "the business of statutory interpretation," if a particular construction "is not the best," then "it is not permissible." *Chevron* ran counter to these principles, the Court held, and so it could not stand.

Writing for the dissenting justices, Justice Kagan characterized the majority's decision as an improper judicial power grab. She contended that *Chevron* furthered agency expertise in regulatory contexts involving scientific and technical subject matter, over which courts lack the requisite knowledge (e.g., when does an alpha amino acid polymer qualify as a "protein"; what makes one "population segment" of an animal species in one geographic region "distinct" from another). By overruling *Chevron*, the dissent argued, the Court was replacing agency decision-making authority in such areas with courts' non-expert judgment and throwing into question the viability of decades of precedent (numbering in the thousands) that followed the *Chevron* framework.

Justice Kagan warned that the majority's opinion would "cause a massive shock to the legal system, 'cast[ing] doubt on many settled constructions' of statutes and threatening the interests of many parties who have relied on them for years."

Takeaways. In a seeming nod to the dissent's concerns, the Court cautioned that, although it was retiring *Chevron*, it did "not call into question prior cases that relied on the *Chevron* framework." A decision that changes the prism through which courts judge agencies and agency interpretations of the statutes they administer is, nonetheless, of potentially significant consequence. Going forward, "[c]ourts must exercise their independent judgment in deciding whether any agency has acted within its statutory authority." Agencies, in turn, will have one less argument with which to defend their actions in litigation, and can no longer defeat challenges based on legal interpretations which are *permissible* but not, in the opinion of a reviewing court, the "best interpretation." And by the same token, plaintiffs bringing a challenge to a regulation may now face a lower burden for obtaining relief.

The full and precise impact of *Loper Bright*—and whether the demise of *Chevron* represents a potential sea-change or a footnote to the field of administrative law—will only come into focus as courts begin to apply it. As the decision itself acknowledges, for example, an agency's "subject matter expertise" may still prove "informative" to a court in litigation. And any particular agency interpretation may still carry some weight, to the extent a court finds it persuasive. Furthermore, the Court recognized that in some cases, "the best reading of a statute is that it delegates discretionary authority to an agency." *Loper Bright*, then, did not strip Congress of its power to make such delegations of power, and in that event, a reviewing court applying *Loper Bright* would uphold an agency's action within that discretion as lawful. The difference without *Chevron* is that a court could not *presume* such a delegation of discretionary authority, based only on the *ambiguity* of an act of Congress. Instead, it must determine where such delegations exist by its exercise of independent judgment. And it "need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous."

***Corner Post* clarifies period for challenging regulations.**

On July 1, the final day of the term, the Court decided *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*. Read this decision here. Though the merits of the case concern the "interchange fee" paid by merchants in connection with debit card transactions, and set by regulations of the Federal Reserve, the Court took this case to decide a different, procedural question which had divided the federal courts of appeal: when does the six-year limitations period *begin* for legal claims challenging the legality of federal agency actions outside of enforcement proceedings? Was it from the time that the agency action becomes final or when the plaintiff first suffers injury?

The Court held that these claims do not "accrue" (that is, the six-year period does not begin) until the plaintiff bringing suit suffered an "injury" from the action. Relying on the "well-settled meaning" of the statutory term "accrue," the Court held that even if an agency action (such as promulgation of a regulation) became final long in the past, a plaintiff's timeline for filing suit does not start until that plaintiff has been injured by the action. A plaintiff like Corner Post itself—a convenience store which regularly pays these fees pursuant to regulation—exemplifies the effect of the ruling. Although it filed suit in 2021, more than six years after the relevant regulation became final, the store itself has only been subject to the regulation since it opened in 2018. Thus its challenge was not time-barred.

In dissent, Justice Jackson criticized the decision's "flawed reasoning" and its "far-reaching results." She contended that the Court had erred by construing "accrues" to refer to the time of a plaintiff's injury, a "one-size-fits-all" approach that ignored precedent indicating that the meaning of "accrues" is "context specific". And, in the administrative law context, statutes of limitations, she argued, "uniformly run from the moment of agency action." The effect of the decision, moreover, was that "there is effectively no longer any limitations period for lawsuits that challenge agency regulations on their face." The decision, Justice Jackson warned, would allow "well-heeled litigants to game the system by creating new entities or finding new plaintiffs whenever they blow past the statutory deadline."

Takeaways. Businesses, particularly those which have opened or entered new lines of work in recent years, may wish to review their rights with respect to federal regulatory regimes in light of *Corner Post*. Some may have challenges to administrative action available to them which would be previously thought to be time-barred. To be sure, a timely challenge is not the same as a winning challenge, and whether a court would uphold an agency action will depend on the specifics of the regulation and the legal merits of the challenger's and agency's respective positions. And as the Court itself noted, "major regulations are typically challenged immediately," and new challenges to longstanding regulations may be governed by "binding Supreme Court or circuit precedent." Nevertheless, at least for some regulated entities, *Corner Post* may have put those legal merits back in play.

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Regulated entities should consider whether these decisions have materially changed the regulatory landscape in which they do business. From herring fishing to debit card transactions and in countless other fields of regulation, the Court's rulings promise to alter the course of cases between agencies and the parties they regulate, and may in some cases tilt the balance in favor of private parties.

Partridge Snow & Hahn's Litigation Practice Group is ready to answer questions regarding the implication of these decisions. For more information, contact Christopher M. Wildenhain or James P. McGlone.

Authors' note: The authors would like to extend a thank you to Summer Law Clerk Samantha Rhodes for her assistance in the preparation of this article.

Date Created
July 18, 2024